

### **REMARKS**

This responds to the Office Action dated July 5, 2005, and the references cited therewith. Claims 1, 16, and 32 are amended. Claims 1-36 are now pending in this application.

#### **Double Patenting Rejection**

Claims 1-6, 15-20 and 28-32 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-19 of U.S. Patent No. 6,501,987.

A Terminal Disclaimer in compliance with 37 CFR 1.321(c) is enclosed herewith to overcome these rejections. In so doing, Applicant does not admit the assertions set forth in the Office Action dated July 5, 2005.

Applicant respectfully requests reconsideration and allowance of claims 1-6, 15-20 and 28-32.

#### **§103 Rejection of the Claims Using Stroebel**

Claims 1, 2, 15-50, 31 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stroebel et al. (U.S. Patent No. 5,725,561, hereinafter "Stroebel").

#### ***Claim 1***

Claim 1 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 1, Applicant respectfully traverses the rejection and submits that Stroebel does not provide the recited subject matter. For example, Applicant is unable to find in Stroebel, among other things, a teaching or suggestion of a rate smoothing module configured to select a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm based on whether a predetermined state is present, as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

*Claims 2 and 15*

Applicant respectfully traverses the rejection of claims 2 and 15. Claims 2 and 15 are dependent on claim 1. Thus, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2 and 15.

Applicant respectfully requests reconsideration and allowance of claims 2 and 15.

*Claim 16*

Claim 16 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 16, Applicant respectfully traverses the rejection and submits that Stroebel does not provide the recited subject matter. For example, Applicant is unable to find in Stroebel, among other things, a teaching or suggestion of selecting a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm using an implantable system if the state of at least one of a cardiac signal and a physiologic parameter corresponds to a predetermined state, as recited in claim 16.

Applicant respectfully requests reconsideration and allowance of claim 16.

*Claims 17-20 and 31*

Applicant respectfully traverses the rejection of claims 17-20 and 31. Claims 17-20 and 31 are dependent on claim 16. Thus, the discussion above for claim 16 is incorporated herein to support the patentability of claims 17-20 and 31.

Applicant respectfully requests reconsideration and allowance of claims 17-20 and 31.

*Claim 32*

Claim 32 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 32, Applicant respectfully traverses the rejection and submits that Stroebel does not provide the recited subject matter. For example, Applicant is unable to find in Stroebel, among other things, a teaching or suggestion of selecting a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm using an implantable system if the state of a cardiac signal corresponds to at least one predetermined heart rate state, as recited in claim 32.

Applicant respectfully requests reconsideration and allowance of claim 32.

§103 Rejection of the Claims Using Boute and Stroebel

Claims 1, 2, 15-20, 31 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Boute et al. (U.S. Patent No. 4,503,857, herein after "Boute") in view of Stroebel.

Claims 3-6 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Boute in view of Stroebel (or in view of Stroebel).

Claims 28 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Boute in view of Stroebel (or over Stroebel).

*Claim 1*

Claim 1 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 1, Applicant respectfully traverses the rejection and submits that Boute and Stroebel, each alone or in combination, do not teach or suggest the recited subject matter. For example, Applicant is unable to find in Boute and Stroebel, each alone or in combination, among other things, a teaching or suggestion of a rate smoothing module configured to select a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm based on whether a predetermined state is present, as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

*Claims 2 and 15*

Applicant respectfully traverses the rejection of claims 2 and 15. Claims 2 and 15 are dependent on claim 1. Thus, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2 and 15.

Applicant respectfully requests reconsideration and allowance of claims 2 and 15.

*Claim 16*

Claim 16 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 16, Applicant respectfully traverses the rejection and submits that Boute and Stroebel, each alone or in combination, do not teach or suggest the recited subject matter. For example, Applicant is unable to find in Boute and Stroebel, each alone or in combination, among other things, a teaching or suggestion of selecting a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm using an implantable system if the state of at least one of a cardiac signal and a physiologic parameter corresponds to a predetermined state, as recited in claim 16.

Applicant respectfully requests reconsideration and allowance of claim 16.

*Claims 17-20 and 31*

Applicant respectfully traverses the rejection of claims 17-20 and 31. Claims 17-20 and 31 are dependent on claim 16. Thus, the discussion above for claim 16 is incorporated herein to support the patentability of claims 17-20 and 31.

Applicant respectfully requests reconsideration and allowance of claims 17-20 and 31.

*Claim 32*

Claim 32 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 32, Applicant respectfully traverses the rejection and submits that Boute and Stroebel, each alone or in combination, do not teach or suggest the recited subject matter. For example, Applicant is unable to find in Boute and Stroebel, each alone or in combination, among other things, a teaching or suggestion of selecting a first rate smoothing percentage and a second rate smoothing percentage of a rate smoothing algorithm using an implantable system if the state of a cardiac signal corresponds to at least one predetermined heart rate state, as recited in claim 32.

Applicant respectfully requests reconsideration and allowance of claim 32.

*Claim 3-6 and 29*

Applicant respectfully traverses the rejection of claims 3-6. Claims 3-6 are dependent on claim 1. Claim 29 is dependent on claim 16. Thus, the discussion above for claim 1 is incorporated herein to support the patentability of claims 3-6, and the discussion above for claim 16 is incorporated herein to support the patentability of claim 29.

Applicant respectfully requests reconsideration and allowance of claims 3-6 and 29.

*Claims 28 and 30*

Applicant respectfully traverses the rejection of claims 28 and 30. Claims 28 and 30 are dependent on claim 16. Thus, the discussion above for claim 16 is incorporated herein to support the patentability of claims 28 and 30.

Applicant respectfully requests reconsideration and allowance of claims 28 and 30.

*Reentry of Withdrawn Claims Requested*

Claims 7-14, 21-27, and 33-36 were withdrawn from consideration. In light of what is believed to be allowable as discussed above, Applicant respectfully requests reentry and consideration of claims 7-14, 21-27, and 33-36 in this application.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

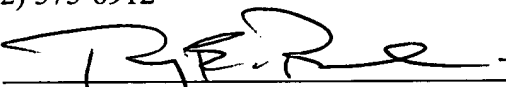
Respectfully submitted,

ERIC G. LOVETT ET AL.

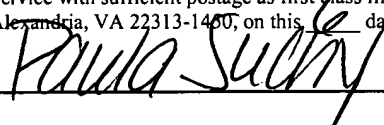
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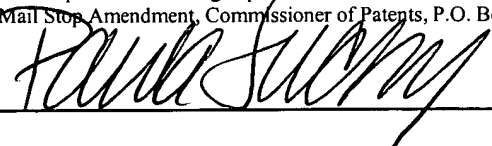
Date Sept. 6, 2005

By   
Timothy E. Bianchi  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6 day of September, 2005.



Name



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